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**BATHAE DUNNE LLP**

Yavar Bathae (CA 282388)  
yavar@bathaedunne.com  
Andrew C. Wolinsky (CA 345965)  
awolinsky@bathaedunne.com  
Allison Watson (CA 328596)  
awatson@bathaedunne.com  
Priscilla Ghiță (*pro hac vice*)  
pghita@bathaedunne.com  
445 Park Avenue, 9th Floor  
New York, NY 10022  
Tel.: (332) 322-8835

Brian J. Dunne (CA 275689)  
bdunne@bathaedunne.com  
Edward M. Grauman (*pro hac vice*)  
egrauman@bathaedunne.com  
901 South MoPac Expressway  
Barton Oaks Plaza I, Suite 300  
Austin, TX 78746  
Tel.: (213) 462-2772

*Interim Co-Lead Counsel for the  
Advertiser Class*

[Additional counsel on signature page]

**SCOTT+SCOTT ATTORNEYS AT LAW LLP**

Amanda F. Lawrence (*pro hac vice*)  
alawrence@scott-scott.com  
Patrick J. McGahan (*pro hac vice*)  
pmcgahan@scott-scott.com  
Michael P. Srodoski (*pro hac vice*)  
msrodoski@scott-scott.com  
156 South Main Street, P.O. Box 192  
Colchester, CT 06415  
Tel.: (860) 537-5537

Patrick J. Coughlin (CA 111070)  
pcoughlin@scott-scott.com  
Carmen A. Medici (CA 248417)  
cmedici@scott-scott.com  
Hal D. Cunningham (CA 243048)  
hcunningham@scott-scott.com  
Patrick J. Rodriguez (*pro hac vice*)  
prodriguez@scott-scott.com  
Daniel J. Brockwell (CA 335983)  
dbrockwell@scott-scott.com  
600 W. Broadway, Suite 3300  
San Diego, CA 92101  
Tel.: (619) 233-4565

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al.,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

Case No. 3:20-cv-08570-JD

Hon. James Donato

**ADVERTISER PLAINTIFFS'  
OPPOSITION TO DEFENDANT META  
PLATFORMS, INC.'S MOTION TO  
EXCLUDE EXPERT TESTIMONY AND  
OPINIONS OF MARKUS JAKOBSSON**

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**FILED UNDER SEAL****PRELIMINARY STATEMENT**

Advertisers’ oppose Meta’s wholly meritless motion to exclude the testimony of Dr. Markus Jakobsson, a computer security expert qualified and necessary for the jury to understand critical—and contested—technical evidence in Advertisers’ antitrust case.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Companies like Snap deploy code within their apps to capture information about in-app behavior—called analytics—and then send this information to proprietary analytics servers so that the app owners can understand what is going on within their products, and can obtain telemetry information that the app owners consider to be particularly valuable and important about their own apps. Jakobsson Rpt. ¶ 45. These analytics—which are coded, designed, communicated, and transported by an application, not its users—[REDACTED]

[REDACTED]. In order to protect these competitively valuable secrets, companies like Snap encrypt their analytics traffic and ensure it is being sent to the right server—and not an imposter—using cryptographic authentication based on what are called “digital certificates.” Jakobsson Rpt. ¶¶ 38-40, 44-45.

<sup>1</sup> All exhibit numbers refer to exhibits to Advertiser Plaintiffs’ Opposition to Defendant Meta Platforms, Inc.’s Motion for Summary Judgment, which was filed today.

<sup>2</sup> Oddly, Meta did not actually include Dr. Jakobsson’s complete reports—despite attempting to include them in their entirety—in its *Daubert* motion. Exs. 6 and 7 are the complete reports, including the material Meta omitted.

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 This kind of cyberattack on a third-party's secure communications is called a "man-in-the-  
5 middle" attack— [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 The facts of all the above—which are an important part of Advertisers' merits case against  
21 Meta for monopolization of the Social Advertising Market—are highly technical. They involve  
22 mobile device and server-side security issues, mobile analytics, digital certificates, encryption, and  
23 even smartphone operating system exploits. And the evidence of record is just as complex, comprising  
24 technical analyses (e.g., Exs. 14, 15, 17), [REDACTED]  
25 [REDACTED]  
26 [REDACTED]. The

27 Court need not take Advertisers' word on this point: Meta's own executives repeatedly described the  
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1 program as beyond even their own technical understanding in documents and at deposition in this  
2 case. *See, e.g.*, Ex. 2215; Olivan Dep. at 201:1-4, 201:24-25; Zuckerberg Dep. at 111:8-11, 115:4-5.

3 Moreover, Meta has disputed [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 . But this evidence is, alas, technical,  
12 so to explain its *actual* meaning (rather than Meta's mischaracterization of it) to the jury, Advertisers  
13 retained one of the world's foremost computer security experts, Dr. Markus Jakobsson, to help explain  
14 [REDACTED]

15 Dr. Markus Jakobsson, a Ph.D. computer scientist with approximately thirty years of  
16 experience, literally wrote the book on man-in-the-middle attacks, Jakobsson Rpt. ¶ 11—one of Dr.  
17 Jakobsson's six textbooks, fifty-plus articles, and 245 total publications on computer security (cited  
18 at least 20,136 times, according to Google Scholar), *id.* ¶¶ 22-25, Jakobsson CV at 3-20. Besides his  
19 publishing pursuits, Dr. Jakobsson has long served in industry roles involving computer security,  
20 including as Principal Scientist at Xerox PARC, as Principal Scientist of Consumer Security at  
21 PayPal, as Senior Director at Qualcomm, and as Chief Scientist at ByteDance from 2020-2021, where  
22 he guided the security research for both ByteDance and TikTok. *Id.* ¶¶ 12, 16.

23 Dr. Jakobsson submitted two reports in this case, Exs. 6 & 7 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

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1 [REDACTED]  
2 [REDACTED]  
3 Dr. Jakobsson will unquestionably help the jury and the Court to understand what Meta was  
4 actually doing to its competitors—and to competition— [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 Critically, without Dr. Jakobsson's testimony, the trial will have no technical counterbalance  
14 to Meta's wrong-on-its-face mischaracterization of the details and absolute rarity [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 [REDACTED]. This is, presumably why Meta is moving to exclude Dr.  
21 Jakobsson, and is willing to stoop to wholesale misinformation about what is actually in his reports  
22 to do it. But none of Meta's arguments actually meet the *Daubert* standard.

23 Rather, Meta creates a fanciful, fictional version of Dr. Jakobsson's reports—one that ignores  
24 the vast majority of the 299 paragraphs in Dr. Jakobsson's two reports—and tells the Court that Dr.  
25 Jakobsson's opinions are junk science because some parts of his reports are directly in line with  
26 Advertisers' substantive positions, as set forth in contention interrogatories. Even if this overlap were  
27 the entirety of Dr. Jakobsson's reports (it is not, as discussed above, even close to the case), it is  
28 entirely unobjectionable that an expert's opinions match the positions of litigants and counsel—and





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[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

Again, the words and concepts in this key exhibit are avowedly technical. As Dr. Jakobsson will explain, walking the jury and the Court through evidence far more complex than the above—

[illegible]

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[REDACTED]

Although Meta has taken the position in its *Daubert* motion that the technical details of its [REDACTED] program need not be understood by the jury and the Court to adjudicate this case, Meta's actual defenses and arguments with respect [REDACTED] give the lie to this position. For example [REDACTED] but Dr. Jakobsson—who is both a computer security expert and a longtime industry participant, including holding positions at PayPal, Qualcomm, and ByteDance in the past decade [REDACTED]

[REDACTED]

Moreover, without a technical expert like Dr. Jakobsson to walk the jury and the Court through the details of what it means to “man-in-the-middle” traffic to an “analytics server,” it may not be

[REDACTED]

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For example, Dr. Jakobsson will

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[REDACTED]

22       Meta's *Daubert* motion does not seriously contest all of the above. Rather, it cuts and pastes  
23 a handful of passages from Dr. Jakobsson's 126 pages of expert disclosures and asserts that because  
24 they are similar (in some cases, near identical) to Advertisers' interrogatory disclosures, Dr.  
25 Jakobsson cannot testify. Mot. at 3-7. As an initial matter, this position is squarely opposite to Meta's  
26 *co-pending* position in a different motion filed the same day as this one in which Meta wants to  
27 *exclude* a different expert's opinions for *not* being worded identically to earlier contention  
28 interrogatory responses. *See* Meta SJ Mot. at 13-14. In any event, Meta's position on expert

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disclosures being “too similar” to previous disclosures, including contentions, is simply wrong. *See, e.g., Optronix Techs, Inc. v. Ningbo Sunny Elec. Co.*, 20 F.4th 466, 477 (9th Cir. 2021) (“The court properly admitted Dr. Sasian’s report because the parts written by counsel consisted of background information qualified by statements such as ‘I am informed that . . .’ Dr. Sasian also testified that he signed his report after reviewing and editing it and determining that it accurately reflected his analysis and opinion with regard to the case.”); *NetFuel, Inc. v. Cisco Sys., Inc.*, 2020 WL 1274985, at \*3-4 (N.D. Cal. Mar. 17, 2020) (“Plaintiff’s argument, however, is flawed. It ignores the reality that Federal Rule of Civil Procedure 26 does not require experts to unilaterally write their reports. Indeed, attorneys may be involved in the preparation of an expert report. This involvement can include counsel’s paraphrasing of the expert’s qualifications, counsel’s providing ‘teamwork,’ ‘collaboration,’ or editorial assistance on the report, counsel’s composing of initial drafts of reports based upon communications with the expert and allowing the expert to substantively revise the report to reflect the expert’s opinions, or counsel’s drafting of the report with the expert’s substantive assistance.” (cleaned up)). Dr. Jakobsson consistently testified at deposition that he wrote both of his reports, and that they accurately reflect his opinions. *See* Ex. 104 (Jakobsson Dep.) at 42:15-23. (“Q. And did you actually write your reports? A. I did. Q. And you understood what you were putting in there and you stand by the opinions in your reports. Right? A. Yes. I have one small typo that I need to correct, but apart from that, yes.”).

Meta also argues that Dr. Jakobsson “speculates” about irrelevant issues that are not “technical.” Mot. at 7-8. This is not a serious basis to exclude Dr. Jakobsson’s testimony under *Daubert*. An example of one of these paragraphs identified by Meta is below:

[REDACTED]

[REDACTED] The above is a description of evidence that Dr. Jakobsson reviewed in connection with preparing his opinions—and comes in the context of a technical evaluation of an

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1 engineer, at that. The fact that Dr. Jakobsson discusses evidence in his reports does not render them  
2 “junk science”—quite the opposite—and it is not clear why Meta believes he should be excluded  
3 under *Daubert* as a result. *See* Fed. R. Civ. P. 26(a)(2)(B)(ii) (requiring expert report to contain “the  
4 facts or data considered by the witness in forming” their opinions). But Meta’s motion is replete with  
5 this kind of argument. Meta’s complaints of this nature are the stuff of cross-examination (if at all).  
6 They do not present a credible basis to exclude an important expert witness under the guise of  
7 *Daubert*.

8 Finally, Meta argues that Dr. Jakobsson’s testimony should be excluded because he allegedly  
9 offers legal conclusions. Mot. at 9-11. The problem with this argument is evident from Dr.  
10 Jakobsson’s actual reports—he offers no legal opinions, and says as much throughout. What Meta  
11 really seems to be concerned about is the fact that Dr. Jakobsson—a computer security expert with  
12 26 years’ experience who has written entire books about cybercrime and serves on an international  
13 consortium to combat it, Jakobsson Rpt. ¶¶ 11, 18 & CV—calls Meta’s [REDACTED]  
14 [REDACTED]. The problem  
15 with Meta objecting to these characterizations is that they are true, and Dr. Jakobsson—an undeniable  
16 cybercrime expert—is eminently qualified to make them. Meta’s argument that such descriptions of  
17 its conduct are “unfairly prejudicial” is incorrect, because the descriptions are undeniably *fair*. To the  
18 extent Meta wants to assert otherwise, it can certainly cross-examine Dr. Jakobsson about his  
19 experience with cybercrime and wiretapping, and about why he believes [REDACTED]  
20 [REDACTED].

**CONCLUSION**

21  
22 Meta’s motion to exclude Dr. Markus Jakobsson should be denied.  
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1 Dated: January 29, 2025

2 **BATHAE DUNNE LLP**

3 By: /s/ Yavar Bathae

4 Yavar Bathae (CA 282388)  
 yavar@bathaeedunne.com  
 5 Andrew C. Wolinsky (CA 345965)  
 awolinsky@bathaeedunne.com  
 6 Priscilla Ghiță (*pro hac vice*)  
 pghita@bathaeedunne.com  
 7 445 Park Avenue, 9th Floor  
 New York, NY 10022  
 8 Tel.: (332) 322-8835

9 Brian J. Dunne (CA 275689)  
 bdunne@bathaeedunne.com  
 10 Edward M. Grauman (*pro hac vice*)  
 egrauman@bathaeedunne.com  
 11 901 South MoPac Expressway  
 Barton Oaks Plaza I, Suite 300  
 12 Austin, TX 78746  
 Tel.: (213) 462-2772

13 Allison Watson (CA 328596)  
 awatson@bathaeedunne.com  
 14 3420 Bristol St, Ste 600  
 15 Costa Mesa, CA 92626-7133

16 *Interim Co-Lead Counsel for the Advertiser Class*

17 **LEVIN SEDRAN & BERMAN LLP**

18 Keith J. Verrier (*pro hac vice*)  
 kverrier@lfsblaw.com  
 19 Austin B. Cohen (*pro hac vice*)  
 20 acohen@lfsblaw.com  
 510 Walnut Street, Suite 500  
 21 Philadelphia, PA 19106-3997  
 Tel.: (215) 592-1500

22 *Members of Executive Committee for the Advertiser Class*

23 **SCOTT+SCOTT**  
**ATTORNEYS AT LAW LLP**

By: /s/ Amanda F. Lawrence

Amanda F. Lawrence (*pro hac vice*)  
 alawrence@scott-scott.com  
 Patrick J. McGahan (*pro hac vice*)  
 pmcgahan@scott-scott.com  
 Michael P. Srodoski (*pro hac vice*)  
 msrodoski@scott-scott.com  
 156 South Main Street, P.O. Box 192  
 Colchester, CT 06415  
 Tel.: (860) 537-5537

Patrick J. Coughlin (CA 111070)  
 pcoughlin@scott-scott.com  
 Carmen A. Medici (CA 248417)  
 cmedici@scott-scott.com  
 Hal D. Cunningham (CA 243048)  
 hcunningham@scott-scott.com  
 Patrick J. Rodriguez (*pro hac vice*)  
 prodiguez@scott-scott.com  
 Daniel J. Brockwell (CA 335983)  
 dbrockwell@scott-scott.com  
 600 W. Broadway, Suite 3300  
 San Diego, CA 92101  
 Tel.: (619) 233-4565

24 **AHDOOT & WOLFSON, PC**

Tina Wolfson (CA 174806)  
 twolfson@ahdootwolfson.com  
 Robert Ahdoot (CA 172098)  
 rahdoot@ahdootwolfson.com  
 Theodore W. Maya (CA 223242)  
 tmaya@ahdootwolfson.com  
 Henry J. Kelson (*pro hac vice*)  
 hkelston@ahdootwolfson.com  
 2600 West Olive Avenue, Suite 500  
 Burbank, CA 91505  
 Tel.: (310) 474-9111

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**FILER ATTESTATION**

I am the ECF user who is filing this document. Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the other signatories have concurred in the filing of the document.

Dated: January 29, 2025

By: /s/ Brian J. Dunne